THE HONOURABLE MRS. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE MS. JUSTICE G. ROHINI

WRIT PETITION No. 26542 of 2007

ORAL ORDER:
(Per T. Meena Kumari, J)

The Writ Petition is filed seeking to declare the action of the 2nd respondent in rejecting the stay application through the impugned order dated 21.11.2007 and the consequential proceedings issued by the 1st respondent dated 3.12.2007 for recovery of the disputed penalty of Rs. 7,27,320/- as illegal, arbitrary and to consequently restrain the 2nd respondent from taking any coercive steps for recovery thereof.

The petitioner is a Limited company incorporated under Indian Companies Act carrying on business in development of Software and is an assessee on the roles of the respondents. During the course of its business, the petitioner had entered into agreements with various Primary Agricultural Cooperative Societies for providing technical assistance for computerization in pursuance of an M.O.U. entered with the Government of A.P.

The learned counsel for the petitioner submits that since the petitioner is providing only service under the A.S.P. Model, the question of its liability of tax under the provisions of the A.P. V.A.T. Act, 2005 does not arise. It is also further contended by the learned counsel for the petitioner that the petitioner has also not collected any disputed tax from its customers. Without considering the request of the petitioner, the 1st respondent has passed impugned order dated 30.8.2007 confirming the levy of tax. The learned

counsel for the petitioner further submits that against the orders of levying penalty by the 1st respondent, the petitioner filed an appeal and stay application before the 2nd respondent. The 2nd respondent rejected the stay application pending appeal by the impugned order dated 21.11.2007. In pursuance of the said stay rejection order of 2nd respondent, the 1st respondent issued a notice dated 3.12.2007 to the petitioner demanding the disputed penalty and contemplating to take coercive action. Challenging the said action, the petitioner has filed the present Writ Petition.

Heard the learned the learned counsel for the petitioner and also the learned Special Standing Counsel for the Commercial Taxes.

The controversy is that pending an appeal, application for stay was dismissed by the appellate authority. We have gone through the record. We feel that the interest of justice would have been met if stay was granted pending appeal, subject to deposit of 1/4th of the liability. Therefore, we set aside the order of the authorities and direct that 1/4th of the penalty and interest shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this Order. For such period, there shall be an unconditional stay and stay shall continue till disposal of the appeal, provided the amount is deposited within the stipulated time. The deposit of amount shall be without prejudice to the rights of the petitioner in appeal. If any amount has already been paid by the petitioner, the same shall be given credit.

Accordingly, the Writ Petition is disposed of. No costs.

_____

T. MEENA KUMARI, J

_____

G. ROHINI, J

12.12.2007

N.B.
C.C. by 19.12.2007
BO
CHV